

COPY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

SUSAN MORAN and JOHN UDALL,

Plaintiffs,

vs.

GALE L. GARRJOTT, in his capacity as
Director of the Arizona Department of Revenue,
the ARIZONA DEPARTMENT OF REVENUE
of the State of Arizona,

Defendants.

No. TX 97-00119

No. TX 97-00131

No. TX 97-00150

(Consolidated)

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**PROPOSED PRELIMINARY
FINDINGS AND INTERIM ORDER**

(Assigned to the Honorable
Mark W. Armstrong)

The above-entitled matter having come before the Court on hearing on April, 19, 2006, pursuant to the Plaintiffs' Motion for the Preliminary Approval of a Stipulation of Settlement and Order Regarding Notice. The Plaintiffs appeared by their counsel, Randall D. Wilkins of Bonn & Wilkins, Chartered and William A. Wiseman of O'Neil, Cannon, Hollman, DeJong S.C. The Defendants, Arizona Department of Revenue and its Director (the "Department"), appeared by their counsel, William A. Richards, Assistant Attorney General. Having considered the extensive files, records and proceedings heretofore had in this litigation, and the Court having reviewed and considered the Stipulation of Settlement dated April 19, 2006, by and between Plaintiffs, Plaintiffs' Counsel and the Department (the "Settlement"), and upon the Motions, Memoranda and Declarations of the parties in support thereof, and upon the argument of counsel,

THE COURT HEREBY PRELIMINARILY FINDS AND CONCLUDES as follows:

1. For ease of reference and clarity, the Court has adopted the definitions agreed to by the parties and set forth in the Settlement.

1 2. The Settlement was negotiated by experienced counsel, was the product
2 of over 16 years of litigation, including several appeals and several months of mediated
3 negotiations.

4 3. The interests of the Claimants are aligned in that they are united in
5 seeking the maximum possible recovery for the taxes imposed upon mandatory contributions
6 to federal retirement programs for the years 1985 through 1990.

7 4. In negotiating the Settlement, the Plaintiffs and Plaintiffs' Counsel have
8 fairly and adequately protected the interests of the Claimants in the common fund and there is
9 no evidence of collusion. Indeed, the Settlement was reached after months of mediated
10 negotiations, with Bruce Meyerson, a former judge and now an esteemed member of the bar
11 serving as mediator.

12 5. The Settlement in this case reflects economies of time, effort, and
13 expense.

14 6. The Settlement provides a fair refund review procedure to individual
15 refund Claimants while significantly reducing the delays and eliminating all risks of
16 uncertainty had this Litigation continued.

17 7. The Settlement is fair, reasonable, adequate and in the best interests of
18 the Claimants and merits communication to the Claimants pending final approval by the Court.

19 8. A hearing should be held thereon to consider the comments and
20 objections to the Settlement by Claimants before the same is finally approved by the Court.

21 9. If the Court determines at the hearing that the Settlement should be
22 finally approved, the Court will immediately thereafter hold a hearing to consider Plaintiffs'
23 Counsel's Application for Award of Attorneys' Fees in the amount of 20% of the refunds paid
24 under the Settlement pursuant to the common fund for fees and expenses.

25 10. The parties have presented the Court with a Stipulation of Plan of Notice
26 and with two (2) forms of notice, one form for mailing (attached as Exhibit B-1 to said
27 Stipulation) and the other for publication (attached to said Stipulation as Exhibit B-2) to inform
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1 Claimants of the proposed Settlement, the hearing thereon and Claimants rights with respect
2 thereto. The Court has reviewed these forms of notice and finds them to be appropriate.

3 BASED UPON THE FOREGOING,

4 IT IS ORDERED that a hearing be set for final approval of the Stipulation of
5 Settlement, Plaintiffs' Counsel's Application for Award of Attorneys' Fees and for entry of a
6 final judgment consistent with the Settlement, said hearing to be held on August
7 4, 2006, at 9:00 a.m., Arizona Time MST in Courtroom 109 Maricopa County Superior Court,
8 Northeast Regional Court Center, 18380 North 40th Street, Phoenix, Arizona 85032, which
9 hearing may be adjourned from time to time by oral announcement at such hearing or any
10 adjournment thereof, without further notice of any kind.

11 IT IS FURTHER ORDERED that the attached forms of notice are approved
12 by this Court.

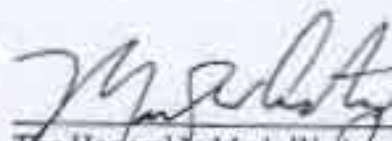
13 IT IS FURTHER ORDERED that in advance of this hearing the Department
14 shall cause notice to be issued to the Claimants by mailing first class a copy of the attached
15 Notice of Settlement (Exhibit B-1) to Claimants, who have been identified from the
16 Department's records, on or before May 19, 2006, and by publishing a copy of the
17 separately attached Summary Notice for Publication (Exhibit B-2) once a week for three (3)
18 consecutive weeks in the Federal Times as a legal notice therein. Such publication shall be
19 completed by May 26, 2006.

20 IT IS FURTHER ORDERED that proof of such notice as directed herein shall
21 be filed by the Department with the Court prior to the date of the hearing.

22 IT IS FURTHER ORDERED that any Claimant who objects to the Settlement,
23 Plaintiffs' Counsel's Application for Award of Attorneys' Fees, or the final judgment to be
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1 entered thereon, may appear and present such objections at the hearing, provided that a
2 member so objecting serves upon Plaintiffs' Counsel c/o Randall D. Wilkins of Bonn &
3 Wilkins, Chartered, FERC2 Refund Litigation, Attention: Objections to FERC2 Settlement,
4 P.O. Box 1289, Phoenix, Arizona 85001-1289 and William A. Richards, Esq., Senior
5 Litigation Counsel - CIVIL DIVISION, Attention: Objections, 1275 West Washington,
6 Phoenix, Arizona 85007-2926, and files with this Court not later than June 26, 2006,
7 (a) notice of intention to appear, (b) proof of status as a Claimant, (c) a written statement that
8 details such Claimant's specific objections to any matter before the Tax Court, the basis
9 therefor and any additional reasons why such person desires to appear and to be heard, (d)
10 documents and writings which such person desires the Tax Court to consider in support of
11 his/her objections, and, if the objection concerns attorneys' fees, (e) an affidavit attesting to
12 whether the objecting Claimant received the prior written notice of the Tax Court's fee hearing
13 on April 3, 1998 and whether the Claimant received any refunds under ITR 98-1. The filing
14 with the Tax Court shall be made with the Clerk's office, Maricopa County Superior Court,
15 Central Courthouse, 201 West Jefferson, Phoenix, Arizona 85003. No person shall be heard,
16 and no brief or papers shall be received or considered, unless the foregoing documents have
17 been served and filed as hereinabove provided and signed pursuant to Rule 11, Ariz. R. Civ. P.,
18 except as this Court in its discretion may otherwise direct. Any objections filed and served in
19 accordance with this procedure will be considered by the Tax Court whether or not the
20 objecting Claimant appears personally or by counsel at the hearing.
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1 DONE IN OPEN COURT this 25 day of April, 2006.

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4 The Honorable Mark W. Armstrong
5 Superior Court Judge
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